IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

| CLIFFORD BRODSKY, |) |
|--------------------|------------------------|
| Petitioner, | No. C 08-1574 CRB (PR) |
| VS. | ORDER TO SHOW CAUSE |
| BEN CURRY, Warden, | |
| Respondent. | |
| |) |

Petitioner, a state prisoner incarcerated at the Correctional Training Facility in Soledad, California, has filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging the California Board of Parole Hearings' ("BPH") November 6, 2006 decision to deny him parole.

BACKGROUND

In 1991, petitioner entered a plea of no contest to a charge of conspiracy to commit murder in Los Angeles County Superior Court and received a sentence of 15 years to life in state prison. Pursuant to the plea agreement, the prosecutor agreed not to oppose petitioner's release when he became eligible for parole, provided that petitioner remain free of disciplinary problems while incarcerated and cause no violence to befall any of the state's witnesses who might have testified against him.

Petitioner has been denied parole each time he has appeared before the BPH. On February 20, 2008, the Supreme Court of California denied review of his challenge to the BPH's November 6, 2006 decision to deny him parole and a subsequent hearing for one year.

DISCUSSION

A. Standard of Review

This court may entertain a petition for a writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a).

It shall "award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto." <u>Id.</u> § 2243.

B. <u>Legal Claims</u>

Petitioner seeks federal habeas corpus relief from the BPH's November 6, 2006 decision finding him not suitable for parole, and denying him a subsequent hearing for one year, on the ground that the decision does not comport with due process. Among other things, petitioner contends that the decision is not supported by some evidence in the record and that the prosecutor violated the terms of his plea agreement. Liberally construed, petitioner's claims appear colorable under § 2254 and merit an answer from respondent. See Sass v. Cal. Bd. of Prison Terms, 461 F.3d 1123, 1127-29 (9th Cir. 2006) (finding that refusal to set parole date for prisoner with 15-to-life sentence implicated prisoner's liberty interest in release on parole which cannot be denied without adequate procedural due process protections). Biggs v. Terhune, 334 F.3d 910, 914-15 (9th Cir. 2003) (same).

CONCLUSION

For the foregoing reasons and for good cause shown,

- 1. The clerk shall serve by certified mail a copy of this order and the petition and all attachments thereto on respondent and respondent's attorney, the Attorney General of the State of California. The clerk also shall serve a copy of this order on petitioner.
- 2. Respondent shall file with the court and serve on petitioner, within 60 days of the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be issued. Respondent shall file with the answer and serve on petitioner a copy of all portions of the state trial record that have been transcribed previously and that are relevant to a determination of the issues presented by the petition.
- 3. If petitioner wishes to respond to the answer, he shall do so by filing a traverse with the court and serving it on respondent within 30 days of his receipt of the answer.

SO ORDERED.

DATED: <u>July 21, 2008</u>

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for

CHARLES R. BREYER United States District Judge

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UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF CALIFORNIA

| CLIFFORD BRODSKY, | Case Number: CV08-01574 CRB |
|--------------------|-----------------------------|
| Plaintiff, | CERTIFICATE OF SERVICE |
| v. | |
| BEB CURRY, Warden, | |
| Defendant. | |

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on July 21, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Clifford Brodsky H-07665 CTF Soledad P.O. Box 689 Soledad, CA 93960-0689

Dated: July 21, 2008

Richard W. Wieking, Clerk By: Frank Justiliano, Deputy Clerk